



## **DIRECTIVE**

**Subject:** Effect of an Extension on Statutes of Limitations  
**Tax:** Corporate Income, Franchise, and Individual Income  
**Law:** G.S. 105-241.1(e); G.S. 105-263; and G.S. 105-266(c)  
**Issued By:** Corporate, Excise, and Insurance Tax Division; Personal Taxes Division  
**Date:** October 25, 2006  
**Number:** CD-06-1

This Directive clarifies the effect that an extension of time to file a corporate income and franchise tax return or an individual income tax return has on the statute of limitations for making a refund request or for proposing an assessment. The laws referenced above will be presented in detail along with additional references to the statutes for when a return is required to be filed.

### **Applicable Statutory Authority**

#### *When Returns Are Required To Be Filed*

A corporate income and franchise tax return generally must be filed by the fifteenth day of the third month following the close of the income year (G.S. 105-130.17(b); G.S. 105-122(a), respectively). An individual income tax return generally must be filed by the fifteenth day of the fourth month following the close of the income year (G.S. 105-155(a)).

#### *Extension of Time for Filing A Return*

A taxpayer may ask the Secretary for an extension of time to file a return under G. S. 105-263. The statute provides, in part:

“The Secretary may extend the time in which a person must file a report or return with the Secretary. To obtain an extension of time for filing a report or return, a person must comply with any application requirement set by the Secretary. An extension of time for filing a franchise tax return, an income tax return, or a gift tax return does not extend the time for paying the tax due or the time when a penalty attaches for failure to pay the tax. An extension of time for filing a report or any return other than a franchise tax return, an income tax return, or a gift tax return extends the time for

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## North Carolina Department of Revenue

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paying the tax due and the time when a penalty attaches for failure to pay the tax.”

### *Statute of Limitations*

The general statute of limitations for assessments in G.S. 105-241.1(e) provides:

“[T]he Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.”

The general statute of limitations for refunds in G.S. 105-266(c) provides:

“No overpayment shall be refunded . . . if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later. An agreement by a taxpayer to extend the time in which the Department can assess the taxpayer for an underpayment automatically extends the time in which the taxpayer can request a refund.”

### **Conclusion**

An extension of time to file a corporate income and franchise tax return or an individual income tax return is statutorily authorized. Therefore, for purposes of the statute of limitations, the date a return is due to be filed is the extended date for filing, not the original due date for filing set out in G.S. 105-130.17(b); G.S. 105-122(a) and G.S. 105-155(a).

### **Scenarios**

The following scenarios demonstrate how the statutes of limitations for assessments and refunds are impacted when a taxpayer receives an extension of time to file a corporate income and franchise tax return or an individual income tax return. For scenarios 1, 2, and 4, assume that all taxes were paid by the statutory due date of the return.

1. James Smith receives an extension of time until October 15, 2005 to file his 2004 individual income tax return. He files the return on October 1, 2008 and requests a refund of \$200. *Is the refund request timely under the statute of limitations?*

Mr. Smith was required to file his 2004 income tax return, under extension, on or before October 15, 2005. The original “date set by statute” for filing the return

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## North Carolina Department of Revenue

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was April 15, 2005. Because an extension of the “date set by statute” is statutorily authorized and becomes the due date for that return, the extended due date becomes the new “date set by statute.”

Under G.S. 105-266(c), Mr. Smith must request a refund within the later of (i) three years from the date set by statute for the filing of the return or (ii) six months from payment of the tax. Three years from the extended “date set by statute” for filing the return would be three years from October 15, 2005 or October 15, 2008. Mr. Smith’s refund request dated October 1, 2008 was filed within three years from the extended due date for filing the return and was, therefore, **timely**.

2. ABC Corporation receives an extension of time until October 15, 2005 to file its 2004 corporate income and franchise tax return. ABC files its return on July 15, 2005. ABC files an amended 2004 return on August 20, 2008. *Is the refund request timely under the statute of limitations?*

ABC Corporation filed its 2004 tax return on July 15, 2005 under an extension, which extended the due date to October 15, 2005. ABC Corporation filed an amended return on August 20, 2008, requesting a refund. Under G.S. 105-266, the request for refund is due within the later of (i) three years from the date set by statute for the filing of the return or (ii) six months from payment of the tax. Three years from the extended “date set by statute” for filing the return would be October 15, 2008. The refund request of August 20, 2008 was, therefore, **timely**.

3. Thomas Brown receives an extension of time until October 15, 2005 to file his 2004 individual income tax return. He files the return on June 23, 2005. The Department of Revenue examines Mr. Brown’s 2004 return on September 2, 2008; discovers an error; and proposes an assessment for an underpayment of tax. *Is the proposed assessment timely under the statute of limitations?*

Mr. Brown filed his 2004 income tax return on June 23, 2005 under an extension, which extended the due date to October 15, 2005. On September 2, 2008, the Department discovers an error on Mr. Brown’s return. The general statute of limitations in G.S. 105-241.1 requires the Department to make an assessment within three years after the later of (i) the date the taxpayer filed a return or (ii) the date the return was required by law to be filed. The date the taxpayer filed the return was June 23, 2005. The date the return was required by law to be filed was October 15, 2005. Three years from the later of these dates is October 15, 2008. The assessment would, therefore, be **timely** if proposed by October 15, 2008.

4. XYZ Corporation receives an extension of time until October 15, 2005 to file its 2004 corporate income and franchise tax return. XYZ files its return on

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## North Carolina Department of Revenue

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November 15, 2005. XYZ files an amended 2004 return on November 1, 2008. *Is the refund request timely under the statute of limitations?*

XYZ Corporation filed its 2004 tax return on November 15, 2005, thirty days past the extended due date to October 15, 2005. XYZ Corporation filed an amended return on November 1, 2008, requesting a refund. Under G.S. 105-266, the request for refund is due within the later of (i) three years from the date set by statute for the filing of the return or (ii) six months from payment of the tax. Three years from the extended "date set by statute" for filing the return would be October 15, 2008. The refund request of November 1, 2008 was, therefore, **not timely**.

### **Questions**

Questions regarding this Directive with respect to corporate income and franchise tax may be directed to the Corporate, Excise, and Insurance Tax Division at (919) 733-8510. Questions concerning individual income tax may be directed to the Personal Taxes Division at (919) 733-3565. You may also write to either of the Divisions at P.O. Box 871, Raleigh, NC 27602-0871.